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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/749,434
Filing Date: December 31, 2003
Appellant(s): LAWRENCE ET AL.

Christopher King
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 25 July 2008 appealing from the Office action mailed 27 December 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0065802 Uchiyama 5-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 25-26, 54-55, 62-63, 71, 80, 83-84, 92, 101, and 104-105** are rejected under 35 U.S.C. 102(b) as being anticipated by Uchiyama (USPGPUB No. 2002/0065802), filed on 30 May 2001, and published on 30 May, 2002.

3. **As per independent claims 25, 54, 104, and 105,** Uchiyama teaches:

A method comprising:

determining client-side behavior data associated with an article {See Uchiyama, [0058], wherein this reads over "the program code . . . may monitor the activity of the browser software so as to collect information concerning that user's browsing behavior, habits, preferences, biases"};

providing the client-side behavior data associated with the article to a ranking processor {See Uchiyama, [0059], wherein this reads over "[t]he program code 140 then, may transmit collected data to the central server 120 for recordation, categorization, and aggregation with data collected from other users"};

calculating a predetermined client behavior score for the article based at least in part on the client-side behavior data associated with the article {See Uchiyama, [0092], wherein this reads over "[t]he system, therefore, may provide customized search results by utilizing user profile information collected for each respective individual and comparing that user profile data with the statistical data concerning a given potential search result. Each prospective search result may be weighted or ranked, for example, at least partially as a function of the comparison with the user profile data"};

storing the predetermined client behavior score in a data store, wherein the data store associates the predetermined client behavior score with the article {See Uchiyama, [0062], wherein this reads over "[a]s a user visits various sites during browsing session, relevant information is collected at the client side and transmitted to the central server 120, where it may be stored in appropriate database records associated with the user, the URL or site itself"};

receiving a search query {See Uchiyama, [0058], wherein this reads over "[k]eywords or query terms which the user submitted prior to navigating to the Web site"; and [0073]};

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determining that the article is associated with the search query {See Uchiyama, [0074]; and [0091], wherein this reads over "[b]y compiling data from registered users in the database within the central server 520, search results for any given query will improve over time"};

receiving from the data store the predetermined client behavior score associated with the article {See Uchiyama, [0086]; and {See Uchiyama, [0092], wherein this reads over "provide customized search results by utilizing user profile information collected for each respective individual"};

arranging the article in a search result of the search query based at least in part on the predetermined client behavior score associated with the relevant article {See Uchiyama, [0093]; and [0092], wherein this reads over "[e]ach prospective search result may be weighted or ranked, for example, at least partially as a function of the comparison with the user profile data"}; and

displaying at least a part of the search result to a user {See Uchiyama, Figures 7 and 8}.

4. **As per dependent claims 62 and 83,** Uchiyama teaches:

The method of claim 26, wherein the search query is an explicit search query {See Uchiyama, [0058], wherein this reads over "[k]eywords or query terms which the user submitted prior to navigating to the Web site"}.

5. **As per dependent claims 63 and 84,** Uchiyama teaches:

The method of claim 26, wherein the search query is an implicit search query {See Uchiyama, [0058], wherein this reads over "[k]eywords or query terms which the user submitted prior to navigating to the Web site"}.

6. **As per dependent claims 71 and 92,** Uchiyama teaches:

The method of claim 25, wherein the client-side behavior data associated with the relevant article comprises frequency of article access data {See Uchiyama, [0117], wherein this reads over "organize search results according to the most popular, or most frequently visited URLs"}.

7. **As per dependent claims 80 and 101,** Uchiyama teaches:

The method of claim 25, further comprising determining a combined score based at least in part on client-side behavior data for multiple users {See Uchiyama, [0014], wherein this reads over "operate to gather and to collect human knowledge by monitoring users' activities on the client or browser side"; [0086], wherein this reads over "compare the respective data store in two users' respective profiles and subsequently compute a relative measure of the compatibility"}.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a

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person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claims 64-70, 72-79, 81-82, 85-91, 93-100, and 102-103** are rejected under 35 U.S.C.

103(a) as being unpatentable over Uchiyama, in view of Official Notice.

10. **As per dependent claims 64 and 85,** the Examiner takes Official Notice that it would have been obvious and widely-known to those of ordinary skill in the art that the client-side behavior data associated with the relevant article could comprise scrolling activity data (i.e. whether the user scrolled down the relevant article to view more of the content).

11. **As per dependent claims 65 and 86,** the Examiner takes Official Notice that it would have been obvious and widely-known to those of ordinary skill in the art that the client-side behavior data associated with the relevant article could comprise printing data (i.e. whether the user printed out the relevant article).

12. **As per dependent claims 66 and 87,** the Examiner takes Official Notice that it would have been obvious and widely-known to those of ordinary skill in the art that the client-side behavior data associated with the relevant article could comprise book marking data (i.e. whether the user bookmarked an article).

13. **As per dependent claims 67 and 88,** the Examiner takes Official Notice that it would have been obvious and widely-known to those of ordinary skill in the art that the client-side behavior data associated with the relevant article could comprise use of computer program application data (i.e. the type of browser utilized by the user).

14. **As per dependent claims 68, 70, 89, and 91,** the Examiner takes Official Notice that it would have been obvious and widely-known to those of ordinary skill in the art that the use of computer program application data is used in connection with additional client-side, behavior data (i.e. data regarding the type of browser utilized may be combined with other featured behavior data to build a user profile).

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15. **As per dependent claims 69 and 90,** the Examiner takes Official Notice that it would have been obvious and widely-known to those of ordinary skill in the art that the client-side behavior data associated with the relevant article could comprise idleness data.

16. **As per dependent claims 72 and 93,** the Examiner takes Official Notice that it would have been obvious and widely-known to those of ordinary skill in the art that the client-side behavior data associated with the relevant article could comprise time of access data (i.e. the time the user accessed the relevant article).

17. **As per dependent claims 73 and 94,** the Examiner takes Official Notice that it would have been obvious and widely-known to those of ordinary skill in the art that the client-side behavior data associated with the relevant article could comprise time of access relative to the access of other associated articles data (i.e. the proximity in time of accessed articles by the user).

18. **As per dependent claims 74 and 95,** the Examiner takes Official Notice that it would have been obvious and widely-known to those of ordinary skill in the art that the client-side behavior data associated with the relevant article could comprise forwarding data (i.e. whether the user forwarded the data to another user or entity).

19. **As per dependent claims 75 and 96,** the Examiner takes Official Notice that it would have been obvious and widely-known to those of ordinary skill in the art that the client-side behavior data associated with the relevant article could comprise copying data (i.e. whether the user copies portions of data from the relevant article).

20. **As per dependent claims 76 and 97,** the Examiner takes Official Notice that it would have been obvious and widely-known to those of ordinary skill in the art that the client-side behavior data associated with the relevant article could comprise replying data (i.e. whether the user provided a response to the relevant article via voting or commenting).

21. **As per dependent claims 77 and 98,** the Examiner takes Official Notice that it would have been obvious and widely-known to those of ordinary skill in the art that the client-side behavior data

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associated with the relevant article could comprise mouse movement data (i.e. the regions of the relevant article or application which the user may have navigated the mouse).

22. **As per dependent claims 78 and 99,** the Examiner takes Official Notice that it would have been obvious and widely-known to those of ordinary skill in the art that the client-side behavior data associated with the relevant article could comprise user interactions with a separate article data.

23. **As per dependent claims 79 and 100,** the Examiner takes Official Notice that it would have been obvious and widely-known to those of ordinary skill in the art that the client-side behavior data associated with the relevant article could comprise location data (i.e. the IP address or geographical region wherein the user is located).

24. **As per dependent claims 81 and 102,** the Examiner takes Official Notice that it would have been obvious and widely-known to those of ordinary skill in the art to combine a plurality of types of client-side behavior data to determine and provide a combined score for use in ranking the relevant articles according to said client-side behavior data.

25. **As per dependent claims 82 and 103,** the Examiner takes Official Notice that it would have been obvious and widely-known to those of ordinary skill in the art that different weights for different types of behavior data would be used in the computation of the score such that certain behavior data would be accorded more weight than others.

(10) Response to Argument

A. Uchiyama Fails to Disclose Each and Every Limitation of Claims 24, 54, 62-63, 71, 80, 83-84, 92, 101, and 104

Appellant asserts the argument that "Uchiyama fails to disclose calculating a predetermined client behavior score for an article based on client-side behavior data associated with the article." See Appeal Brief, page 8. Specifically, Appellant asserts the argument that "neither URLs visited nor duration of time spent at a site constitutes the claimed predetermined client behavior score for an article." See Appeal Brief, page 8. The Examiner respectfully disagrees. The Examiner respectfully disagrees in that

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Uchiyama discloses that data collected may include the URLs visited, the duration of time spent at each site. See Uchiyama, [0061]. Additionally, Uchiyama discloses that "[a]s a user visits various sites during browsing sessions, relevant information is collected at the client side and transmitted to the central server 120, where it may be stored in appropriate database records associated with the user, the URL or site itself." See Uchiyama, [0062]. Accordingly, the provided data from the client and stored subsequently in a central server is used to determine a relevancy score for the article, wherein the article is thereafter ranked accordingly in the return of search results.

In any given user record, a wide variety of information concerning that user's preferences and habits, i.e. a user profile, may be maintained. This recorded data may be accessed and utilized by the system to personalize each respective user's interactive experience, for example, through customized ranking of search results or through targeted site recommendations. Additionally, user profile data, and in particular, explicit data input by a user, may be made available to other users, such that users, as well as the knowledge and recommendations each has to offer, are recognized by the system as searchable information. Uchiyama, [0073] and [0083].

That is, data containing the URLs visited and the duration of time spent at each site may be used to customize the ranking of search results or recommending targeting sites. Accordingly, it is noted that Therefore, the Examiner notes that Uchiyama accurately discloses the claimed invention as recited for the reasons above.

Additionally, Appellant asserts the argument that the ranking of articles, as disclosed by Uchiyama, does not disclose a "predetermined client behavior score associated with an article." See Appeal Brief, page 9. The Examiner respectfully disagrees. It is noted that the term, "score", in its broadest reasonable interpretation, may be simply defined as grounds for a result. While Appellant seems to constrain the meaning of score to a numerical value, the Examiner notes that said constraint is without merit as the Appellant has failed to recite such within the claims. Accordingly, wherein user behavior such as a URL visit and the time spent viewing a web site (i.e., an article) is used to rank search results, it would have been apparent to one of ordinary skill in the art that the URL visit and time spent would effectively provide a score as applied within the scope of the recited claim limitations. That is,

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wherein the URL visit and time spent provide a positive or negative weighting, said weighting would provide a grounds for a result (i.e., a score).

Accordingly, for the aforementioned reasons above, Uchiyama indeed discloses an invention wherein a predetermined client behavior score is associated with an article.

B. Uchiyama Fails to Disclose Each and Every Limitation of Claim 105

Appellant asserts the argument that "the article with which the behavior data is associated, as well as the data store containing the predetermined client behavior score, is stored in a client device." See Appeal Brief, page 10. The Examiner disagrees and provides a two-fold analysis as the recited claim limitation (i.e., determining client-side behavior data associated with an article stored in a client device) may be read and interpreted in two alternative means.

Firstly, it is noted that the aforementioned claim limitation may be interpreted to construe an invention wherein the client-side behavior that is associated with an article may be stored in a client device. Accordingly, Uchiyama discloses an invention wherein a central server (i.e. a client device) stores user behavior data. See Uchiyama, [0058]. Wherein Appellant has failed to specifically limit the definition of a client device, the Examiner notes that a central device would read upon the recited client device within the scope of its broadest reasonable interpretation. Furthermore, wherein the user's computer terminal may download program code from the central server and in return transmit user data to the central server, one of ordinary skill in the art would have been able to readily interpret the central server to be a client device.

Secondly, it is noted that aforementioned claim limitation may be interpreted to construe an invention wherein the client-side behavior data is associated with an article, wherein the article is stored in a client device. It is noted that in this interpretation, the invention disclosed by Uchiyama would inherently disclose a method wherein the article is stored in the client device. For purposes of this second interpretation, it is noted that Uchiyama discloses a user terminal (i.e. a client device) which contains browser software for viewing a webpage (i.e. an article). Accordingly, it is noted that the user terminal would inherently store the webpage since the viewing of the webpage necessitates the

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download and storage of the webpage onto the user terminal's cache or nonvolatile storage medium.

Therefore, wherein Uchiyama disclose the features of the recited claim limitation as it discloses a method for recording the view time regarding a webpage (i.e., the client side behavior associated with an article), wherein the webpage is downloaded (i.e. stored) and viewed on a client user terminal.

Accordingly, for the aforementioned reasons above, Uchiyama teaches each and every limitation of claim 105, specifically the method step of determining client-side behavior data associated with an article stored in a client device.

C. Claims 64-70, 72-79, 81-82, 85-91, 93-100, and 102-103 are Patentable over Uchiyama and Official Notice

Appellant asserts the argument that "calculating a predetermined client behavior score for an article based on one of the claimed types of client-side behavior data associated with the article and arranging the article in a search result based on the predetermined client behavior score is an area of esoteric technology, and is not capable of instant and unquestionable demonstration as being well-known." See Appeal Brief, page 12-13. The Examiner respectfully disagrees. It is noted that Uchiyama teaches and discloses an invention where predetermined client behavior scores associated with an article are used to arrange a search result. For purposes of clarification, it is noted that the Examiner took Official Notice to the variations of user behavior which may be collected. For example, regarding claims 64 and 85, the Examiner took Official Notice that it would have been obvious to one of ordinary skill in the art that client-side behavior data may include scrolling activity data (i.e., data regarding whether the user scrolled down the relevant article to view more of the article's content). Wherein it would have been obvious to one of ordinary skill in the art that a web browser include scrolling functions, one of ordinary skill in the art would have been able to readily modify the user-behavior reporting feature of Uchiyama to include reporting the scrolling activities (i.e. user-behavior data). Similarly, claims 65-70, 72-79, 81-82, 86-91, 93-100, and 102-103 recite features of a client browser session which would have been widely-known and obvious to one ordinary skill in the art at the time the invention was claimed.

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Lastly, it is noted that Appellant, in his response dated 9 October 2007, failed to adequately traverse the Examiner's Official Notice. See MPEP 2144.03. Specifically, it is noted that Applicant fails to assert why the noticed fact is not considered to be common knowledge or well-known in the art in the present Amendment. For example, wherein the Examiner took Official Notice that it would have been widely-known and obvious to one of ordinary skill in the art that client-side behavior may include scrolling activity data, Appellant failed to assert why it would scrolling activity data would not have been common knowledge or well-known in the art. Accordingly, in light of Appellant's inadequate response, the noticed fact was taken as admitted prior art.

Accordingly, the claim rejections in view of Uchiyama and Official Notice are maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Paul Kim

/Paul Kim/

Conferees (on 11 June 2008):

Tony Mahmoudi

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